

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

In the Matter of:

**MR. MICHAEL J. SPECTOR, ESTANCIAS DE
CERROMAR, INC., MARGO GARDEN PRODUCTS,
INC., AND MARGO CARIBE, INC.**

P.O. Box 367325
San Juan, Puerto Rico 00936-7325

RESPONDENTS

Palmas de Cerro Gordo Development Pump Station
State Road #690 Km 5.8
Vega Alta, Puerto Rico

NPDES Tracking Number PRU020631

Proceeding pursuant to Section 309(a) of the Clean Water Act,
33 U.S.C. § 319(a).

**ADMINISTRATIVE
COMPLIANCE ORDER**

**DOCKET NUMBER
CWA-02-2020-3106**

I. STATUTORY AUTHORITY

1. This Administrative Compliance Order is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(a) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(a).
2. The Administrator has delegated the authority to take this action to the Regional Administrator of Region 2, who in turn, has delegated such authority to the Director of the Caribbean Environmental Protection Division (“CEPD”).
3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that “[e]xcept as in compliance with [CWA § 402], the discharge of any pollutant by any person shall be unlawful.”
4. Section 402 of the Act, 33 U.S.C. § 1342, defines the National Pollutant Discharge Elimination System (“NPDES”) as the national program for, among other things, issuing and enforcing permits.
5. Section 402 of the Act authorizes the Administrator to promulgate regulations for the implementation of the NPDES program.

6. Pursuant to the CWA, EPA promulgated regulations known as “EPA Administered Permit Programs: the National Pollutant Discharge Elimination System,” which was codified at 40 C.F.R. Part 122, as amended.
7. Pursuant to 40 C.F.R. § 122.1(b)(1), “[t]he NPDES program requires permits for the discharge of pollutants from any point source into waters of the United States.”
8. Pursuant to 40 C.F.R. § 122.21(a)(1), any person who discharges or proposes to discharge pollutants, and who does not have an effective permit, must submit a complete NPDES permit application to EPA.
9. The Act and its implementing NPDES regulations contain the following definitions and requirements:
 - a. “discharge of a pollutant” means any addition of any pollutant or combination of pollutants to navigable waters and/or waters of the United States from any point source. Section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2;
 - b. “facility” as any NPDES point source or any other facility or activity (including land or appurtenances thereto) that is subject to the regulations of the NPDES program. 40 C.F.R. § 122.2;
 - c. “navigable waters” as the waters of the United States, including the territorial seas. Section 502(7) of the Act, 33 U.S.C. § 1362(7);
 - d. “owner” or “operator” as the owner or operator of any facility or activity subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
 - e. “person” means as an individual, corporation, partnership or association. Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2;
 - f. “pollutant” means, among others, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water. Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2;
 - g. “point source” as any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2; and

- h. "waters of the United States" means all waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, among others, and their tributaries. 40 C.F.R. § 122.2;
- 10. Section 309(a)(3) of the Act provides that "[w]henever on the basis of any information available . . . the Administrator finds that any person is in violation of [CWA Sections 301 and 308], or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under [Section 402 of the Act, the Administrator] shall issue an order requiring such person to comply with such section...."
- 11. Section 309(a)(5)(A) of the Act provides that "[a]ny order issued under [CWA Section 309] shall state with reasonable specificity the nature of the violation and shall specify a time for compliance . . . taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements."
- 12. EPA is the agency within the Commonwealth of Puerto Rico with authority to administer the federal NPDES program. EPA maintains enforcement authority for violations of the Act and its implementing regulations.

II. FACTUAL FINDINGS

Wastewater Pump Station, Wastewater Sewer Collection System, and Stormwater Sewer Collection System

- 13. Estancias de Cerromar, Inc. ("ECI"), was a for profit corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico. ECI was registered in the Puerto Rico Department of State ("Department of State") on May 5, 1998, under registration number 102490. In accordance to the General Corporation Act, on December 31, 2019, the Department of State cancelled ECI's certificate of incorporation.
- 14. The President and Resident Agent of ECI was Mr. Michael J. Spector.
- 15. ECI and Michael J. Spector developed the Palmas de Cerro Gordo Development (the "Project" or "Development").
- 16. The Project is a residential development located at State Road # 690, Km. 5.8, Vega Alta, Puerto Rico.
- 17. The Development consists of about 175 residences, parking lots, and recreational facilities.

18. The Project has a wastewater sewer collection system consisting of a framework of pipes and appurtenances (including manholes) for conveying untreated sewage collected from the residences to the Project's wastewater pump station (the "Project's Pump Station").
19. The Project's Pump Station consists of a concrete structure with essential equipment such as, bar screens, submersible pumps, and electrical system, necessary to convey untreated sewage to the Puerto Rico Aqueduct and Sewer Authority's ("PRASA") Dorado Wastewater Treatment Plant for treatment.
20. The Project's Pump Station also collects untreated sewage from the nearby community of Villa Alegría Parcels.
21. The Development also has a stormwater sewer collection system designed and constructed for the collection and conveyance of stormwater runoff from the Project's streets through drainage systems, ditches and storm drains into underground stormwater drainage catch basins.
22. The stormwater run-off collected in the underground stormwater drainage catch basins discharges into a wetland tributary to the Cibuco River, which in turn discharges into the Atlantic Ocean.
23. Margo Garden Products, Inc. ("MGPI") is a for profit corporation organized and authorized to do business under the laws of the Commonwealth of Puerto Rico. MGPI was registered in the Department of State on February 17, 1993 under registration number 83062.
24. The President and Resident Agent of MGPI is Mr. Michael J. Spector.
25. A review of the Corporation Registry of the Department of State revealed MGPI merged into Margo Caribe, Inc. ("MCI") on December 29, 2017. MCI is the surviving corporation registered under number 99375.
26. Mr. Michael J. Spector is the President of MCI and was the Resident Agent until December 14, 2018, date when he resigned as resident agent of MCI and designated Mr. Thomas Trebilcock as his successor.
27. At all relevant times referred in this Order, Mr. Michael J. Spector, ECC, MGPI, and MCI (together hereinafter referred to as the "Respondents") have been the owners and/or operators of the Project's Pump Station.

Discharge of pollutants into water of the United States

28. On January 18, 2019, EPA received a citizen complaint from a resident of the Development indicating that Respondents' lack of maintenance of the Project's Pump

Stations was causing sanitary sewage overflows (“SSOs”), from a manhole located in Palmas Street, to gain access into the Project’s stormwater sewer collection system.

29. On September 25, 2019, EPA received an electronic mail from Mrs. Karla Martinez, PRASA’s North Region Compliance Manager. Such email indicated that on September 24, 2020, she observed SSOs from a manhole located in Palmas Street gaining access into the Project’s stormwater sewer collection system. The email also indicated that she visited the Project’s Pump Station and founded to be out of operation because both pumps were out of service.
30. On October 29, 2019, EPA received a citizen complaint reporting additional SSOs occurring in Palmas Street gaining access into the Project’s stormwater sewer collection system.
31. In response to the citizen complaints and PRASA’s referral, on November 5, 2019, an EPA NPDES credential inspector (the “Inspector”) performed a Reconnaissance Inspection (“RI”) of the Project’s Pump Station.
32. The RI included opening and closing conferences; a visual inspection of the Project’s Pump Station; and a walkthrough of Las Palmas Street where sanitary sewer overflows were reported occurring.
33. During the RI, Mr. Juan Carlos Negrón, identified himself as the person responsible for the operation and maintenance of the Project’s Pump Station. Mr. Negrón further indicated that he was the General Manager of MGPI.
34. The findings of the RI were summarized in an Inspection Report (“Inspection Report”) dated November 14, 2019. A copy of the Inspection Report was mailed to Mr. Michael J. Spector in letter dated November 15, 2019.
35. The findings of the RI revealed, among other things, the following with respect to the Project’s Pump Station:
 - a. Pump # 2 was out of service;
 - b. both comminutors were out of service;
 - c. grease chunks and scum were observed in the wet well which was $\frac{3}{4}$ full of it is capacity; and
 - d. lack of connection to the service of the Puerto Rico Electric Power Authority (“PREPA”). The power for the operation of the equipment was being supplied at all times by an alternate emergency power generating unit (“APU”).
36. Also, during the RI, the Inspector performed a walkthrough of Las Palmas Street and observed SSOs from two manholes flowing into at least three stormwaters catch-basin drains.

37. SSOs from the Development's sanitary sewer collection system has gained access into the Development's stormwater sewer collection system, which discharges into a wetland tributary to the Cibuco River, which in turn discharges into the Atlantic Ocean.
38. On April 14, 2020, an EPA official also reviewed the NPDES administrative file located in CEPD (the "EPA File Review"). The EPA File Review revealed that as of such date, Respondent had failed to file an individual NPDES permit application for its discharges of pollutants from the Project into waters of the United States.
39. After performing the RI, the Inspector has continued to receive citizen complaints reporting SSOs from manholes at Las Palmas Street reaching the Development's stormwater sewer collection system due to the lack of adequate operation and maintenance of the Project's Pump Station. The two most recent citizen complaints reporting SSOs occurring in Palmas Street gaining access into the Project's stormwater sewer collection system were received by the Inspector on April 8, 2020 and April 23, 2020.

III. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATIONS

40. Respondents are subject to the provisions of the Act, 33 U.S.C. § 1251, et seq., and the applicable NPDES permit application regulations found at 40 C.F.R. Part 122.
41. Each Respondent is a "person" as defined under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
42. Respondents are the owners and/or operators of the Project's Pump Station.
43. The Project's Pump Station and wastewater sewer collection system are a facility subject to regulation under the NPDES program. 40 C.F.R. § 122.2;
44. Untreated sewage is a "pollutant" as defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2.
45. The Development's stormwater catch basin is a "point source" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
46. The wetland, the Cibuco River, and the Atlantic Ocean are waters of the United States within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
47. Respondents' discharges of untreated sewage through the Development's stormwater catch basin into waters of the U.S. without a NPDES Permit constitute a violation of Section 301 of the CWA, 33 U.S.C. § 1311, and the applicable NPDES regulations; therefore, Respondents are subject to an enforcement action under Section 309 of the Act, 33 U.S.C. § 1319.

IV. ORDERED PROVISIONS

In consideration of the above findings of violations and pursuant to the authority of Section 309 of the Act, 33 U.S.C. § 1319, EPA has determined that compliance with the following requirements is reasonable.

IT IS HEREBY ORDERED:

48. **That within five (5) days upon receipt of the originals of this ORDER by electronic mail,** an authorized representative of the Respondents shall complete the acknowledgment of receipt included as Attachment of this Order and return it via electronic mail to the Chief, Municipal Water Program Branch, Caribbean Environmental Protection Division, EPA Region 2, to the electronic address specified in paragraph 57, below. As soon as viable under the current COVID-19 emergency and considering the executive orders issued by the Governor of Puerto Rico, Respondents shall mail it by certified mail (or its equivalent), the signed acknowledgement of receipt.
49. **Immediately upon receipt of this Order by electronic mail** and pursuant to Section 301(a) of the Act, 33 U.S.C. § 1311(a), Respondents shall cease to discharge any pollutant, including untreated sewage, into waters of the United States, except with authorization under a NPDES permit issued pursuant to the provision of Section 402 of the Act, 33 U.S.C. § 1342. If necessary, Respondents shall install temporary pumping and/or contract a licensed/permitted sanitary wastewater hauler until the Project's Pump Station is fully operational with all the required equipment.
50. **That within five (5) days upon receipt of this ORDER by electronic mail,** Respondents shall submit a certification stating that the discharge of pollutants from the Project's Pump Station into waters of the United States has ceased as of the date of receipt of this Order. The certification shall be submitted to the Chief of the Municipal Water Program Branch, Caribbean Environmental Protection Division, EPA Region 2 to the electronic mail specified in paragraph 57, below.
51. **That within fifteen (15) calendar days of receipt of this ORDER by electronic mail,** Respondents shall develop and submit to EPA a Compliance Plan that outlines a schedule, not to extend beyond thirty (30) calendar days from receipt of this Order, specifying the permanent repairs Respondents plan to perform at the Project's Pump Station to prevent SSOs from occurring.

The Compliance Plan (with a detailed scope of work) must describe all repairs/unclogs, maintenance of all pumps, controllers, mechanical and electrical equipment, switches, float controllers, lighting and safety equipment to the pump station necessary to be made to correct the overflows situation and to prevent this situation from recurring. Once all the repairs are performed, the power supply of the Project's Pump Station should be

connected to PREPA, and the APU should operate in automatic mode at all times, to be available, when power outage occurs.

The Compliance Plan submitted by Respondents will be an integral part of this Order, and subsequently subject to all the enforceable applicable provisions of Section 309 of the CWA.

52. **That within thirty (30) calendar days of receipt of this ORDER by electronic mail,** Respondents shall develop and submit to EPA a Preventive Maintenance Program (“PMP”) for the Project’s Pump Station and its sanitary sewer collection system. Respondents must ensure that all the equipment and appurtenances are properly operated and maintained to ensure compliance with this Order. Upon its submittal to EPA, Respondents shall immediately implement the PMP, unless EPA submits comments to request modifications.

The PMP shall include, at a minimum:

- a. frequency of periodic maintenance, numbers of staff persons to be assigned to perform the task, the equipment that will be used and a description of the maintenance procedure;
- b. a routine log of lubrication and equipment adjustments;
- c. pumps, motors and drives should be oiled and greased in strict accordance with the recommendations of the equipment manufacturer, industry standards, or more frequently as required;
- d. all electrical control panels should be inspected, and preventive maintenance performed in accordance with manufacturer recommendations, industry standards, or more frequently as required;
- e. the APU shall be tested, including the battery charge, at least once a week to verify its operation; and
- f. the bar screens shall be clean. Grease, rags, debris, should be removed periodically from the bar screens and wet well in order to avoid equipment malfunction and/or raw sewage overflows from the pump station and its sewer collection system.

53. **That within sixty (60) calendar days of receipt of this ORDER by electronic mail,** Respondents shall submit a certification that all required repairs have been made to the Project’s Pump Station pursuant to the Compliance Plan developed pursuant to paragraph 51, above, and that the pump station is fully operational.

54. **That within sixty (60) calendar days of receipt of this ORDER by electronic mail,** Respondents shall prepare and submit to EPA a cost report detailing the expenses incurred by the Respondents at the Project's Pump Station to implement the Compliance Plan developed pursuant to paragraph 51, above. The cost report must include but not be limited to labor, operations and maintenance, installation, repairs, copies of purchased orders, receipts and payments that describes all repairs/replacements that were made to the pump station to avoid wastewater overflows from recurring and to assure that the pump station is operating accordingly. The report shall detail the amount of time and associated costs which were required to comply with this ORDER.

V. GENERAL PROVISIONS

55. Any questions concerning this Order should be directed to Mr. Héctor Ortiz, Municipal Water Program Branch, Caribbean Environmental Protection Division at (787) 977-5883. Information about the NPDES Program for private entities is located at the EPA web site <http://cfpub.epa.gov/npdes>.
56. Any documents to be submitted by Respondents as part of this Order shall be sent by electronic mail and by certified mail (or its equivalent) as soon as viable considering the current COVID-19 emergency and executive orders issued by the Governor of Puerto Rico, and shall be signed by an authorized representative of the respective entity (see 40 C.F.R. § 122.22), and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

57. All information required to be submitted under this Order shall be sent by electronic mail and by certified mail (or its equivalent) as soon as viable considering the current COVID-19 emergency and executive orders issued by the Governor of Puerto Rico to the following addresses:

Angel Meléndez
Manager, Water Quality Area
Puerto Rico Department of Natural and Environmental Resources
P.O. Box 11488
San Juan, Puerto Rico 00910;
angelmelendez@jca.pr.gov

and

Jaime Geliga
Chief, Municipal Water Program Branch
Caribbean Environmental Protection Division
U.S. Environmental Protection Agency, Region 2
City View Plaza II, Suite 7000
48 RD. 165 Km. 1.2
Guaynabo, PR 00968-8069
geliga.jaime@epa.gov.

58. The Respondents shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer, regarding the ordered provisions, with the following designated Agency representative: Mr. Héctor Ortiz, Municipal Water Program Branch, Caribbean Environmental Protection Division at (787) 977-5883 or via email at ortiz.hector@epa.gov. Unless the Agency official issuing the Order decides otherwise, the Ordered Provisions shall become effective at the expiration of said period for consultation.
59. Respondents have the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.
60. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. This Order is an enforcement action taken by EPA to ensure swift compliance with the CWA. Issuance of this Order shall not be deemed an election by EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the Act.
61. Notice is hereby given that should EPA commence an action in a United States District Court for a violation of any Ordered Provision of this Order, Respondents may be subject to: (1) civil penalties up to \$55,800 per day for each day of violation that occurred after November 2, 2015, pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d); and/or (2) injunctive relief, pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), as imposed by the Court.
62. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

63. This Order shall become effective upon the date of execution by the Director, Caribbean Environmental Protection Division.

Signed: _____
Carmen R. Guerrero-Pérez
Director
Caribbean Environmental Protection Division
Environmental Protection Agency, Region 2